UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

FERRING PHARMACEUTICALS INC.,) Civil Action No.: 1:13-cv-12553
Plaintiff-Counterclaim Defendant, v.	 DECLARATION OF BRIAN R. MICHALEK IN SUPPORT OF PLAINTIFF'S EMERGENCY CROSS-MOTION FOR ENTRY OF
BRAINTREE LABORATORIES, INC., Defendant-Counterclaim Plaintiff) A PROTECTIVE ORDER)))
Detendant-Counterclaim Flamen.))

- I, Brian R. Michalek, hereby declare as follows:
- 1. I am an attorney at Olson & Cepuritis, Ltd., counsel for Ferring Pharmaceuticals Inc. ("Ferring"). I have personal knowledge of the facts stated herein, except those stated on information and belief and, if called upon, could and would testify competently to them. I make this declaration in support of Plaintiff's Emergency Cross-Motion for Entry of a Protective Order.
- 2. On October 9, 2015, Braintree Laboratories, Inc. ("Braintree") produced a document entitled "Addendum to Preopik (sic)." Although Braintree stalled in producing metadata associated with this document until December 28, 2015, the metadata revealed that the custodian of the "Addendum to Preopik (sic)" document was a Braintree employee, and it was not created until April 1, 2014.
- 3. Attached as Exhibit A is a true and correct copy-of Braintree's Notice of Deposition pursuant to Federal Rule of Civil Procedure 30(b)(6) dated December 24, 2015.

- 4. Attached as Exhibit B is a true and correct copy of an excerpt of a guidance document from the Food and Drug Administration explaining the accepted practice in the pharmaceutical industry of responding to unsolicited requests about FDA-regulated medical products by providing truthful, balanced, non-misleading, and non-promotional scientific or medical information that is responsive to the specific request, even if responding to the request requires a firm to provide information on unapproved or uncleared indications or conditions of use.
- 5. I declare under the laws of the United States of America and penalty of perjury that the foregoing is true and correct.

Executed this 8th day of January, 2016, in Chicago, Illinois.

/s/ Brian R. Michalek

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system on January $8,\,2016$ and will be sent electronically to the registered participants as identified on the NEF:

Barry S. Pollack Joshua L. Solomon Eric Sommers Phillip Rakhunov POLLACK SOLOMON DUFFY LLP 133 Federal Street, Suite 902 Boston, MA 02110

/s/ Arne M. Olson
Arne M. Olson